



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

5/12/2022 10:38:53 AM

Office of West Virginia  
Secretary Of State

**NOTICE OF PUBLIC COMMENT PERIOD**

AGENCY: Education

TITLE-SERIES: 126-026

RULE TYPE: Legislative  
Exempt

Amendment to Existing Rule: Yes

Repeal of existing rule: No

RULE NAME: Participation in Extracurricular Activities (2436.10)

CITE STATUTORY AUTHORITY: W. Va. Code §§29A-3B-1, et seq.; W. Va. Board of Education v. Hechler, 180 W. Va. 451, 376 S.E.2d 839 (1988); and, W. Va. Bd. of Educ. v. Bd. of Educ., 239 W. Va. 705, 806 S.E. 2d 136 (2017)

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 06/13/2022 4:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Charlene Coburn, Accountability Officer

ADDRESS: WVDE Office of Support and Accountability, Capitol Building 6, Suite 700

1900 Kanawha Blvd. E., Charleston, West Virginia 25305

EMAIL: ccoburn@k12.wv.us

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

Policy 2436.10 establishes academic eligibility of students to participate in extracurricular activities both during and after normal school hours in West Virginia public schools.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

Changes to this policy will impact credits and grades for students who have had a break in public school attendance wishing to return to public school and participate in extracurricular activities. Additionally, this policy will impact students who are homeschooled and wish to participate in public school extracurricular activities.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

There will be no economic impact on revenues of state government as a result of the proposed amendment of 126CSR26, Policy 2436.10.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

There will be no economic impact on special revenue accounts as a result of the proposed amendment of 126CSR26, Policy 2436.10.

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

There will be no economic impact on the state or its residents as a result of the proposed amendment of 126CSR26, Policy 2436.10.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2022 Increase/Decrease (use "-")	2023 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0	0	0
<b>Personal Services</b>	0	0	0
<b>Current Expenses</b>	0	0	0
<b>Repairs and Alterations</b>	0	0	0
<b>Assets</b>	0	0	0
<b>Other</b>	0	0	0
<b>2. Estimated Total Revenues</b>	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

There will be no economic impact on revenues of state government, special revenue accounts, or the state or its residents as a result of the proposed amendment of 126CSR26, Policy 2436.10.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Michele L Blatt -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

**Policy 2436.10, Participation in Extracurricular Activities  
Executive Summary**

---

**West Virginia Department of Education  
Office of Support and Accountability**

---

**Policy Cycle:**     ☒ 30 day Comment Period                      ☐ Adoption of Policy

**Policy Process:**   ☒ Revision            ☐ Repeal and Replace            ☐ New

**Introduction:** The policy is a revision. Due to cyclical review of all policies, this policy was reviewed to assure current legislation and federal requirements are being followed.

**Background:** This policy has been used to guide participation in extra-curricular. Revisions took place on September 10, 1994, June 16, 2008, and December 14, 2020.

Five internal stakeholders and 10 external stakeholders were involved in the revision of the policy. External stakeholders, from different geographical areas of the state, included WVSSAC administrative staff, superintendents, county central office personnel, principals, and teachers.

**Proposed Changes:** Policy 2436.10 is being minimally revised to include updated language reflecting statutory requirements from W. Va. Code §§18-2-5, 18-2-25, 18-8-1, and 18-8-1a. Additionally, a purpose section has been added to communicate the intention of the policy.

**Impact:** Changes to this policy will impact credits and grades for students who have had a break in public school attendance wishing to return to public school and participate in extracurricular activities. Additionally, this policy will impact students who are homeschooled and wish to participate in public school extracurricular activities.

---

**Action:**

- ☒ Release for 30 day public comment.
  - ☐ Approve by WVBE with effective date of \_\_\_\_/\_\_\_\_/20\_\_\_\_
-

**Policy 2436.10, Participation in Extracurricular Activities**  
**List of Stakeholders**

---

**West Virginia Department of Education**

**External Stakeholders**

- Bernie Dolan, Executive Director, WVSSAC
- Dr. Cindy Daniel, Assistant Executive Director, WVSSAC
- Jeff Bryant, Superintendent, Greenbrier County
- Paul E. McClanahan, Director of Secondary Curriculum, Professional Learning, and Accountability, Putnam County
- Joni Shortridge, Director of Special Education, Lincoln County
- Gregory Moore, Principal, South Harrison High School, Harrison County and President, WVSSAC Board of Directors
- Michael Kelley, Principal, Herbert Hoover High School, Kanawha County
- Trent Sherman, Principal, Martinsville High School, Berkeley County
- John Rodgers, Principal, Mountaineer Middle School, Upshur County
- Aaron Fedorke, Teacher, Wheeling Park High School, Ohio County

**Internal Stakeholders**

- Jonah Adkins, Coordinator, Leadership Support Services
- Drew McClanahan, Director, Government Relations
- Taran Wolford, Director, Human Resources
- Josh Grant, Coordinator, Middle and Secondary Learning Services
- Timothy Elliot, Coordinator, Career and Technical Education Services

126CSR26

TITLE 126  
LEGISLATIVE RULE  
BOARD OF EDUCATION

SERIES 26  
PARTICIPATION IN EXTRACURRICULAR ACTIVITIES (2436.10)

**§126-26-1. General.**

1.1. Scope. -- This legislative rule establishes academic eligibility of students to participate in extracurricular activities both during and after normal school hours in West Virginia public schools.

1.2. Authority. -- W. Va. Constitution, Article XII, §2; and W. Va. Code §§18-2-5, ~~and §18-2-25(d), 18-8-1, and 18-8-1a.~~

1.3. Filing Date. -- ~~November 12, 2020.~~

1.4. Effective Date. -- ~~December 14, 2020.~~

1.5. Repeal of Former Rule. -- This legislative rule amends W. Va. 126CSR26, Policy 2436.10, Participation in Extracurricular Activities, filed ~~May 16, 2008~~ November 12, 2020, and effective ~~June 16, 2008~~ December 14, 2020.

**§126-26-2. Purpose.**

2.1. This policy promotes expectations of academic performance for students engaged in extracurricular activities. While students bear the responsibility to meet these expectations, school administrators are required to enforce eligibility rules to create a school environment primarily focused on academic performance.

**§126-26-~~23~~. Applicability.**

~~23~~.1. This policy applies only to interscholastic athletics, student government, and class officers in grades 6-12. Excluded from this policy are co-curricular activities which are closely related to identifiable academic programs/areas of study and which serve to complement academic curricular activities such as career and technical education, linguistic, mathematic, scientific, forensic, theatrical, musical, journalistic, and other similar academic cocurricular activities.

**§126-26-~~34~~. Eligibility.**

~~34~~.1. In order to participate in the extracurricular activities to which this policy applies, a student must meet the following: all state and local attendance requirements and:

4.1.a. adhere to all state and local attendance policies.

~~34.1.ab.~~ 4.1.ab. Maintain a 2.0 average.

~~34.1.ab.1.~~ A 2.0 average is defined as a grade-point average (GPA) of 2.0 or better on a scale where an "A" ~~mark earns is given the value of 4 points~~, a "B" ~~is awarded is given the value of 3 points~~, a "C" ~~is worth is given the value of 2 points~~, a "D" is given ~~a the~~ value of 1 point, and an "F" is ~~worth is given the value of 0 points~~.

~~34.1.ab.2.~~ For purposes of achieving the clearest and most uniform application of the policy for those schools which use a numerical grading system, all numerical grades shall be converted to the corresponding letter grade. Each letter grade shall be assigned the appropriate value as set forth above, and the average thereof computed to determine whether the student is eligible. No enhanced value should be given for a "plus" or "minus" designation, such as "B+" or "C-"; all grades with the same letter designation have the same numerical value in the 4.0 scale.

~~34.1.ab.3.~~ In computing a student's GPA for purposes of this policy, all subjects undertaken by the student and for which a final grade is recorded are to be considered. Athletic practice may not be counted as a subject. The total number of classes taken is divided into the total number of grade points earned to determine the GPA. Classes for which a pass/failure is awarded will be included in computing the GPA only if the student failed the class.

~~34.1.ab.4.~~ A student's eligibility will be determined for each semester by the student's GPA from the previous semester (or, in schools which do not use the traditional semester approach, during the previous 18-week period).

~~34.1.ab.5.~~ If a student does not maintain a 2.0 average for the semester, the student will be ineligible for participation for the following semester. Students not meeting eligibility requirements shall be reviewed at the mid-point of the second semester (the nine-week point) to determine whether the student has achieved a 2.0 average.

~~34.1.ab.6.~~ If a student does not earn a 2.0 average by the end of the second semester, the student may attend summer school to raise the GPA ~~so that the student is to become~~ eligible for participation at the beginning of the next school year. For purposes of computing the GPA after summer school, all of the student's grades from the second semester plus the student's grade from the summer school will be used to determine the GPA.

~~34.1.ab.7.~~ A student who has not achieved a 2.0 GPA for the previous semester may have eligibility reinstated at midsemester if the student has attained at least a 2.0 GPA. In schools and/or counties where the traditional semester approach is not used, the nine-week point shall be utilized in place of the midsemester.

~~34.1.ab.8.~~ In the case of students with exceptionalities as set forth in W. Va. 126CSR16, Policy 2419, Regulations for the Education of Students with Exceptionalities, if grades are given, all grades received from placements in regular classrooms and special education classrooms should be included when computing the GPA. Exceptional students placed in ungraded programs will be eligible for participation in extracurricular activities if their records indicate that they are making satisfactory progress in meeting the objectives of their individualized education program (IEP).

~~34.1.ab.9.~~ Students who have had a break in public school attendance for any reason may be required to establish eligibility after re-enrollment in the public school. ~~If the county accepts the transfer of credits/grades earned in the non-public setting, then those~~ The credits/grades earned and

~~transferred from the non-public setting shall be used in determining academic eligibility. If the county does not accept the transfer of credits/grades earned in the non-public setting, then eligibility must be established after re-enrollment in the public school setting.~~ Eligibility shall be gained at midsemester (nine-week point) if the student has attained at least a 2.0 GPA. In schools and/or counties where the traditional semester approach is not used, the nine-week point shall be utilized in place of the midsemester.

~~34.1.ab.10.~~ Students who are entering public schools or other West Virginia Secondary Schools Activities Commission (WVSSAC) member schools for the first time will be eligible for participation as follows:

~~34.1.ab.10.A.~~ Students who have not earned grades that the receiving school will accept for credit upon transfer will be eligible upon enrollment and must have a 2.0 GPA at the end of the semester in which they enroll to remain eligible.

~~34.1.ab.10.B.~~ Students who have earned grades that the receiving school will accept for credit upon transfer must have earned a 2.0 GPA in the previous semester to be eligible upon enrollment. If not eligible upon enrollment, the student shall become eligible at the midsemester (nine-week point) if the student has attained at least a 2.0 GPA.

~~34.1.ab.11.~~ Homeschooled students participating in interscholastic athletics pursuant to W. Va. Code §18-2-25(d) will be eligible for participation, provided that the student:

~~34.1.ab.11.A.~~ complies with the rules promulgated by the WVSSAC;

~~34.1.ab.11.B.~~ has demonstrated satisfactory evidence of academic progress for the immediately preceding year and that the student's average test results for the immediately preceding year are within or above the fourth stanine in all subject areas; and

~~34.1.ab.11.C.~~ is enrolled in at least one virtual instructional course per semester, consistent with the applicable virtual instruction policies of the county in which the homeschooled student lives and the applicable virtual instruction policies of the WVBE. A homeschooled student who fails to receive a "C" grade or higher at the conclusion of the virtual instruction course or semester, whichever is earliest, shall be ineligible to continue participation and remain ineligible for the following semester.

#### **§126-26-45. Severability.**

~~45.1.~~ If any provision of this policy or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this policy.



**Policy 2436.10, Participation in Extracurricular Activities  
Comment Response Form**

**COMMENT PERIOD ENDS: June 13, 2022**

**COMMENT RESPONSE FORM**

**NOTICE:** *Comments, as submitted, shall be filed with the West Virginia Secretary of State's Office and open for public inspection and copying for a period of not less than five years.*

The following form is provided to assist those who choose to comment on Policy 2436.10, Participation in Extracurricular Activities. Additional sheets may be attached, if necessary.

Name: \_\_\_\_\_ Organization: \_\_\_\_\_

Title: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Please check the box below that best describes your role.

- |   |   |  |   |
|---|---|--|---|
| <input type="checkbox"/> County Board Member  | <input type="checkbox"/> Professional Support Staff | <input type="checkbox"/> Service Personnel | <input type="checkbox"/> Higher Education |
| <input type="checkbox"/> Superintendent       | <input type="checkbox"/> Principal                  | <input type="checkbox"/> Parent/Family     | <input type="checkbox"/> Legislator       |
| <input type="checkbox"/> Central Office Staff | <input type="checkbox"/> Teacher                    | <input type="checkbox"/> Community Member  | <input type="checkbox"/> Other            |

<b>COMMENTS/SUGGESTIONS</b>
<b>§126-26-2. Purpose.</b>     
<b>§126-26-4. Eligibility.</b>     

Please direct all comments to:  
Charlene Coburn, Accountability Officer  
Office of Support and Accountability  
West Virginia Department of Education  
Capitol Building 6, Suite 700  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305  
Telephone No.: (304) 558-3199  
Fax No.: (304) 558-6268  
[ccoburn@k12.wv.us](mailto:ccoburn@k12.wv.us)